IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

GIFT TAX REFERENCE No 2 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF GIFT-TAX

Versus

NALINIBEN J. DESAI

Appearance:

1. GIFT TAX REFERENCE No. 2 of 1990

MR BB NAIK with MR MANISH R BHATT for Petitioner No. 1

SERVED BY RPAD - (N) for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 09/11/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE D.A.MEHTA)

The Income Tax Appellate Tribunal has referred the following question at the instance of Commissioner of Income-tax for the opinion of this Court for assessment year 1982-83:-

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in setting aside the order of the C.G.T. and resorting that of the Gift-tax Officer ?"

2. The return of gift declaring taxable gift of Rs.5,55,000/- was filed by the assessee. The assessment was completed under section 15(3) of the Gift-tax Act, 1958 (hereinafter referred to as `the Act'). For the purpose of computing the taxable gift, the provisions of Rule 1D of the Wealth-tax Rules, 1957 were taken into consideration and from the provision made for tax, advance tax paid had been deducted. The Commissioner of Gift-tax considered the assessment order as erroneous and being prejudicial to the interest of revenue and in suo motu revision under section 24(2) of the Act directed the Gift-tax Officer to work out the value of the shares by deducting the advance tax paid from the gross provision for tax. The assessee succeeded in appeal before the Tribunal on the basis of the decision of this Court in the case of Commissioner of Wealth-tax vs. Ashok K. Parikh (1981) 121 ITR 46.

3. We have heard Mr BB Naik learned Standing Counsel for the applicant-revenue. Though served, none appears on behalf of the assessee.

4. Our attention is invited to the decision of the Apex Court in Bharat Hari Singhania vs. CWT 207 ITR 1, wherein the Supreme Court has impliedly disapproved the decision in the case of Ashok K. Parikh (supra) and held that once the provision for taxation is shown in the column of liabilities in the balancesheet, the amount of advance tax already paid cannot be treated as a liability and shall have to be deducted from the provision for taxation.

5. In light of the aforesaid authoritative pronouncement, we hold that the Tribunal was not right in setting aside the order of Commissioner of Gift-tax. The question referred to us is, therefore, answered in the negative i.e. in favour of the revenue and against the assessee.

6. The Reference is disposed of accordingly with no

order as to costs.

(M.S. Shah,J)

(D.A. Mehta,J)

zgs/-